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CHAPTER 70.

UTILIZATION REVIEWS AND PRIVATE REVIEW AGENTS

SECTION 38-70-10. Definitions.

As used in this chapter:

- (1) "Utilization review" means a system for reviewing the necessary, appropriate, and efficient allocation of health care resources and services given or proposed to be given to a patient or group of patients.
- (2) "Private review agent" means a person performing utilization reviews who is either under contract with or acting on behalf of, but not employed by:
- (a) a South Carolina business entity;
- (b) the State of South Carolina; or
- (c) a hospital.
- (3) "Utilization review program" means an overview of the activities performed by the private review agent.
- (4) "Director or his designee" means the director or his designee of the South Carolina Department of Insurance. The director may appoint a designee or deputy director to assist in the management and operation of the department. If the director does not appoint a designee or deputy director, the term "director or his designee" shall be construed to refer to the director of the department.
- (5) "Certificate" means a renewable certificate of registration granted by the director or his designee to a private review agent, authorizing the agent to perform utilization review activities in this State for two years. This certificate is not transferable.

SECTION 38-70-15. Applicability of chapter.

This chapter applies to insurance companies, administrators of insurance benefit plans, and health maintenance organizations licensed and regulated by the South Carolina Department of Insurance. Insurance companies, administrators of insurance benefit plans, and health maintenance organizations so regulated are exempt from the provisions of Sections 38-70-20(A) and (B), 38-70-30, and 38-70-50.

SECTION 38-70-20. Certificate to perform activities; applications; fees; minimum standards; confidentiality of records.

- (A) No private review agent may conduct utilization reviews in this State unless the director or his designee has granted the private review agent a certificate to perform these activities. The director or his designee, in his discretion, may approve or deny certificate applications.
- (B) An applicant for a certificate shall pay the director or his designee the application fee as provided in Section 38-70-50 and shall submit an application to the director or his designee on forms and with any supporting documentation that the director or his designee requires. The application must contain information regarding the utilization review programs to be conducted by the applicant which must meet the requirements contained in subsection (C) below.
- (C) A utilization review program of the applicant must meet the following minimum standards:
- (1) Notification of an adverse decision by the utilization review agent must be provided to the insured or other party designated by the insured within five business days.
- (2) All utilization review agents shall maintain a procedure by which insured or providers may seek reconsideration of appeal of determinations of the utilization review agent.
- (3) A representative of the utilization review agent must be accessible by telephone to insureds or providers in South Carolina, at least forty hours each week during normal business hours.

- (4) The type and qualification of the personnel either employed or under contract to perform the utilization reviews must be included in the utilization review program information submitted to the director or his designee.
- (5) A copy of the materials designed to inform applicable patients of the requirements of the utilization plan and the responsibilities and rights of patients under the plan must be provided interested parties upon request; and
- (6) An acknowledgment that all applicable state and federal laws to protect the confidentiality of individual medical records are followed.

SECTION 38-70-30. Renewal of certificate.

A certificate must be renewed on the second anniversary of its effective date and is considered to be approved upon payment of the fee unless the director or his designee takes action to withdraw or cancel the certificate.

SECTION 38-70-40. Periodic review of operations of private review agents; telephone audits; complaints; fines; denial, suspension or revocation of certificate; hearings.

- (A) The director or his designee may conduct periodic reviews of the operations of private review agents in this State to ensure that they continue to meet the specifications outlined in this chapter and any applicable regulations which may be promulgated by the department. The director or his designee may perform periodic telephone audits of private review agents authorized to conduct business in this State, to determine if the agents are reasonably accessible.
- (B) Within ninety days upon receipt of a complaint from a licensed health care provider, the director or his designee may investigate the complaint, including holding hearings and taking testimony or other appropriate actions, and shall present a written response to the complainant and the private review agent named. This response must include the following:
- (1) a statement of the original complaint;
- (2) a determination of findings of the director or his designee;
- (3) corrective actions, if any, on the part of the private review agent which the director or his designee finds appropriate; and
- (4) a time frame in which any corrective actions are to be completed.
- (C) The director or his designee is authorized to take appropriate action against a private review agent who fails to meet the standards of this chapter or of any applicable regulations promulgated by the department, or who fails to respond in a timely fashion to corrective actions ordered by the director or his designee. The director or his designee may impose an administrative fine not to exceed one thousand dollars for each violation or may deny, suspend, or revoke the certificate of the private review agent.
- (D) The director or his designee may also deny, suspend, or revoke a certificate if, upon review, the director or his designee finds that the private review agent does not:
- (1) have a utilization review program that meets the requirements of subsection (C) of Section 38-70-20;
- (2) have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported and supervised by appropriate physicians to carry out its utilization review activities;
- (3) meet any applicable regulations the department promulgates under this chapter relating to the qualifications of private review agents or the performance of utilization review;
- (4) remain accessible to patients and providers.
- (E) Before taking the actions authorized by this section to deny, suspend, or revoke the certificate of a private review agent, the director or his designee shall provide the private review agent with reasonable time to supply additional information demonstrating compliance with the requirements of this chapter and the opportunity to request a hearing. If a private review agent requests a hearing, the director or his designee shall send a hearing notice to the involved parties by certified mail, return receipt requested, at

least thirty days before the hearing. The director or his designee shall hold the hearing in accordance with the provisions of Chapter 3 of this title, and the State Administrative Procedures Act. Any action or decision of the director or his designee pursuant to the administrative hearing may be appealed to the Administrative Law Judge Division as provided by law by the private review agent.

SECTION 38-70-50. Application and registration fees.

- (A) Every private review agent, before transacting business in this State, shall pay an application fee of not more than four hundred dollars and a registration fee of not more than eight hundred dollars to the department by July first each even-numbered year. The certificate year runs July first to the following June thirtieth.
- (B) The department shall promulgate regulations necessary to establish these registration and application fees.

SECTION 38-70-60. Promulgation of regulations to enforce chapter.

The department, after consultation with payers, providers, utilization review agents, the Department of Health and Environmental Control and other interested parties, shall promulgate regulations to implement and enforce the requirements of this chapter in accordance with the State Administrative Procedures Act.